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# Advanced VIFSA

- Continuing, Exclusive Jurisdiction (5 min.)
- Determination of Controlling Order (15 min.)
- Enforcement (15 min.)
  - Notice of Registration
  - Challenges to Registration
  - Choice of Law
  - Calculation of Arrears

- Modification (30 min.)
  - Jurisdiction to Modify
  - Choice of Law
- Establishment (10 min.)
  - Establishment vs. Modification
- Evidentiary Provisions (10 min.)

# Continuing, Exclusive Jurisdiction

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Ann. Code of MD, Fam Law Art § 10-308(a):

A MD tribunal that issues an Order has CEJ **to modify its order if the order is the controlling order and:**

- **At the time of the filing of a request for modification,** an individual party or child **resides** in MD, or
- **Even if MD is not the residence of an individual party or child,** the parties **consent in a record or in open court that a MD tribunal may continue to exercise jurisdiction to modify its order.**



# Continuing, Exclusive Jurisdiction

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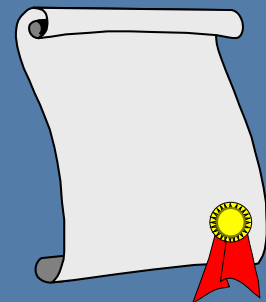
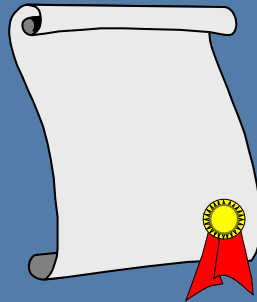
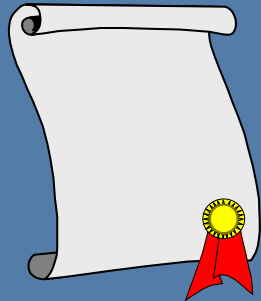
Ann. Code of MD, Fam Law Art § 10-308(b):

A MD tribunal that has issued an Order may not exercise CEJ **to modify its order if:**

- its order is not the controlling order, or**
- all of the individual parties file consent in a record with the MD tribunal that a tribunal of another State that has jurisdiction over at least one of the individual parties or that is located in the state where the child resides may modify the order and assume CEJ.**

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If there are multiple orders -

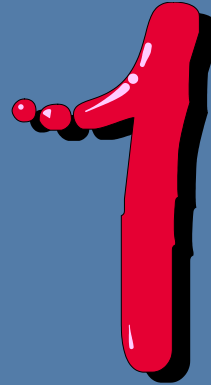


A Determination of Controlling Order is needed



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Question

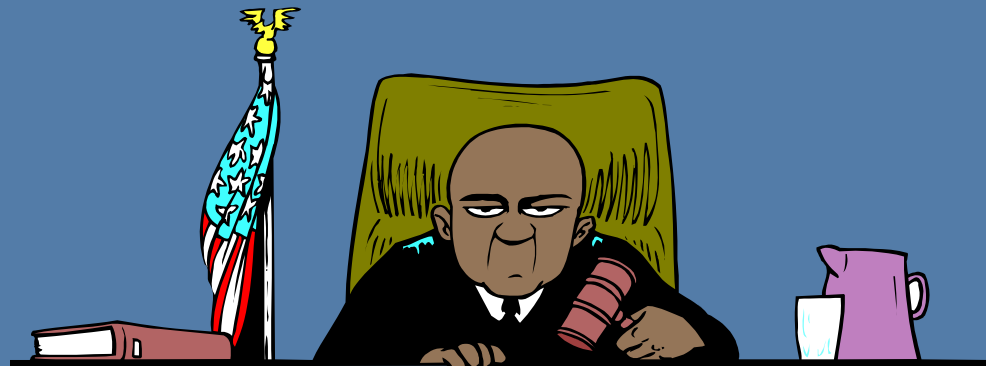


***Who* can determine the  
controlling order?**

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# The Tribunal

- In Maryland tribunals are the **circuit courts**.





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Question



**What jurisdiction is required to  
do a DCO?**

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Question



*When* can a DCO occur?

# A Controlling Order Decision only happens *once* for a case.



It can happen:

- During a registration for enforcement;
- During a registration modification; or
- During a stand-alone DCO proceeding.

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Question



**What orders should be considered when determining the controlling order?**

# Don't consider . . .

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❖ income withholding only orders

❖ Underlying order after proper modification (under UIFSA or FFCCSOA)

❖ arrears only orders

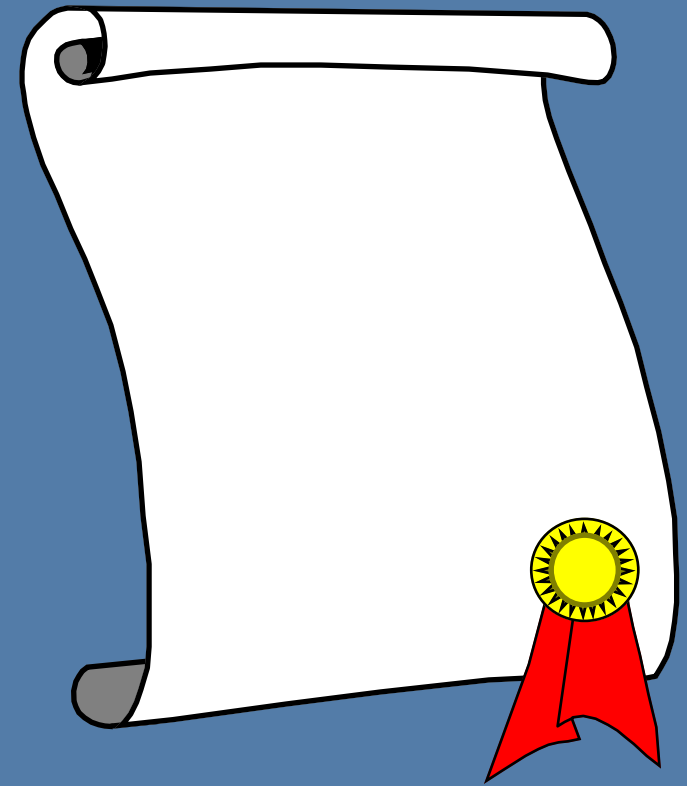
❖ orders registered for enforcement only



Current Support Orders

Orders for Health Insurance

Orders for \$ 0 Support



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Question



**How does the tribunal determine which order controls?**

<u>CP &amp; Child</u>	<u>NCP</u>	<u>Order #1</u>	<u>Order #2</u>	<u>Controlling</u>
MD	VA	TX	N/A	<b>Texas</b>
MD	VA	MD	DE	<b>Maryland</b>
MD	VA	DE	VA	<b>Virginia</b>
MD (6 mos.)	VA	MD	VA	<b>Maryland</b>
MD (1 mo.)	VA (2 mos.)	MD(1993)	VA(1994)	<b>Virginia</b>
MD	VA	DE	MO	<b>None</b>



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Question



How are arrears calculated?

# Reconciliation of Arrears

- A DCO must include a reconciliation of arrears owed on all existing support orders involving the same obligor and child(ren).



# Consolidation of Arrears

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- If there are multiple orders prior to a DCO, the arrears (including interest) under each order should be calculated using the law of the state that issued the order.



# Registration for Enforcement - Documents

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- Child Support Enforcement Transmittal #1
- 2 copies (1 certified) of Order(s) to be registered
- Statement/Accounting of the arrears
- Name, address, SSN of Obligor
- Name, address of Obligor's employer
- Location & description of Obligor's assets/ property
- Name, address of Obligee
- Identification of where to send pmts
- **If multiple orders**
  - **Copy of every support order**
  - **Identification of alleged controlling order**
  - **Statement of amount of consolidated arrears**

# Arrears Calculation #1



1993 to 1994 =  
\$300/mo. (only order)

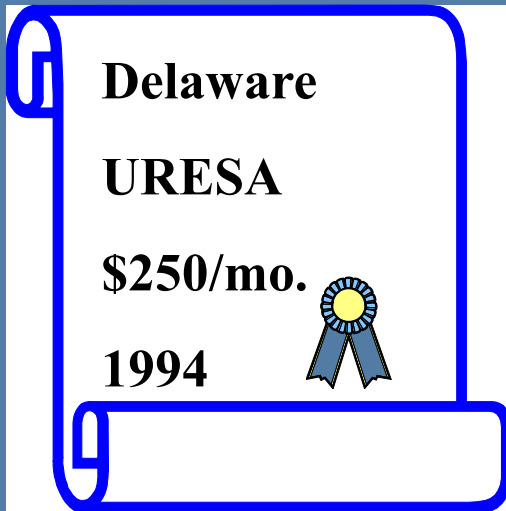


1994 until DCO =  
\$350/mo. (higher of the  
two existing orders, both  
of which are valid)

# Arrears Calculation #2



1993 to 1994 =  
\$300/mo. (only order)

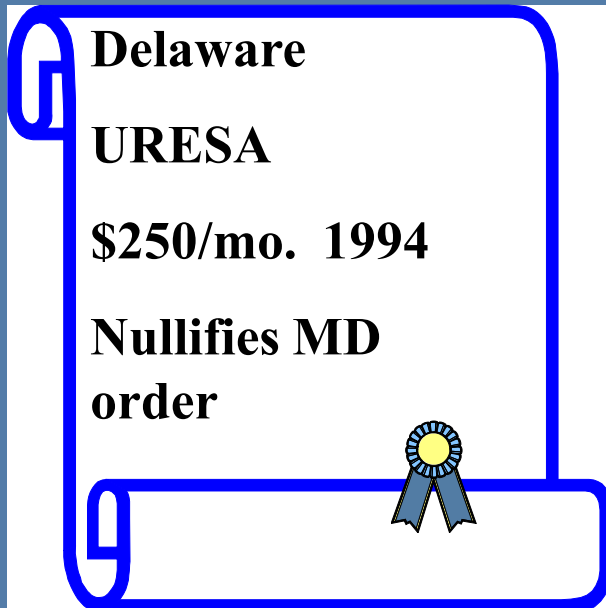


1994 until DCO =  
\$300/mo. (higher of the  
two existing orders, both  
of which are valid)

# Arrears Calculation #3



1993 to 1994 =  
\$300/mo. (only order)



1994 until DCO =  
\$250/mo. (only order  
b/c URESA order  
expressly  
nullified the MD order)

# Consolidation of Arrears

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- Once there has been a DCO and a consolidation of arrears, all tribunals must prospectively apply the law of the state that issued the controlling order to determine the interest that will accrue on the consolidated arrears.



# Registration Notice Requirements

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- Attached Order has been registered
- Amount of alleged arrears
- Order is enforceable once registered
- 20 days to challenge registration or enforcement
- Failure to timely contest results in confirmation of Order & arrears amt
- **If multiple orders**
  - **Identification of the orders, alleged controlling order, and alleged consolidated arrears**
  - **Same procedures above apply to DCO**
  - **Failure to timely contest validity or enforcement of alleged controlled order may result in confirmation that order is controlling order**

# Defenses to Registration for Enforcement

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Issuing tribunal lacked personal jurisdiction

Order was obtained by fraud

Order has been vacated, suspended, modified by later order

Issuing tribunal has stayed order pending appeal

There's a defense to enforcement remedy sought

Full or partial payment has been made

Statute of limitations

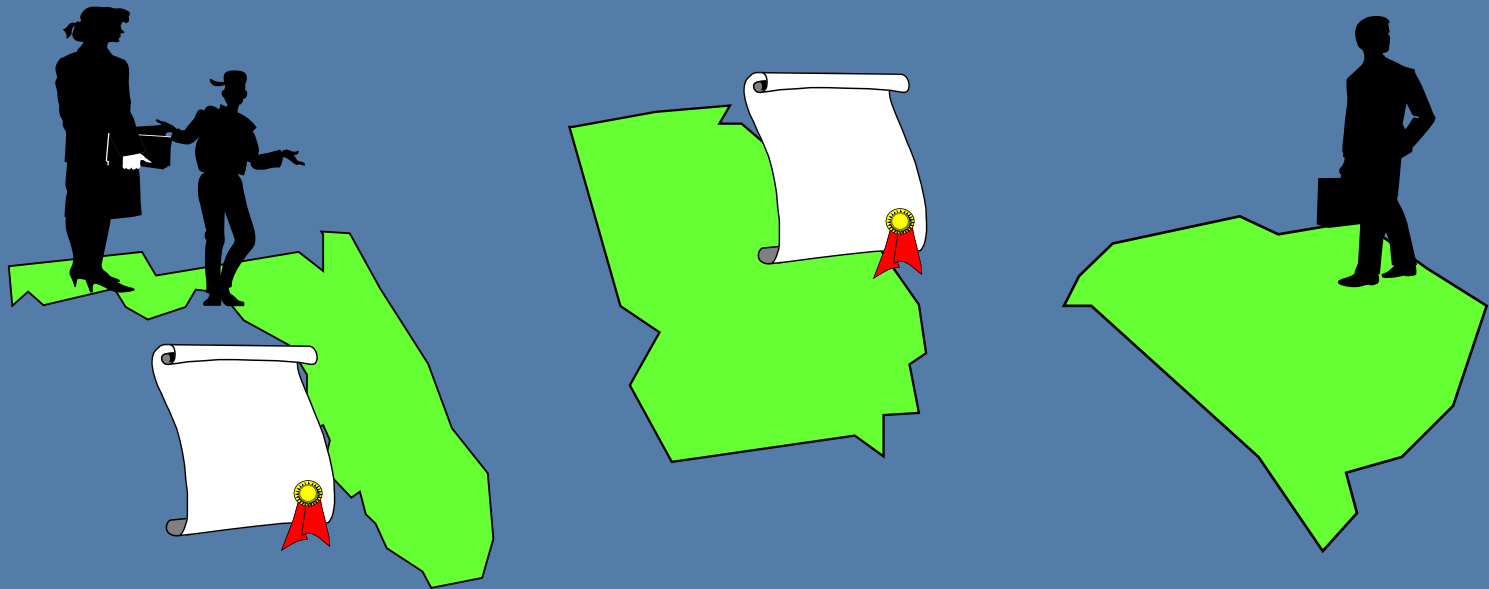
**Alleged controlling order is not the controlling order**

- Issuing State law governs:
  - Duration of current payments
  - Computation of arrearages **and accrual of interest on arrearages**
- Registering State law governs:
  - Enforcement procedures & remedies
- Longer S/L applies
- **Law of State issuing Controlling Order governs:**
  - **Interest that accrues on future arrears & on consolidated arrears**

- Ann. Code of MD, Fam Law Art § 10-308:
- A MD tribunal that issues an Order retains CEJ over that Order as long as:
  - An individual party/child resides in MD at the time of the filing of a request for modification, OR
  - Both Parties, regardless of the residence of the parties or child, agree in writing or open court that the MD tribunal may continue to exercise its CEJ

# Modification Rules

- If only 1 State can claim CEJ, That State has Exclusive Jurisdiction to Modify



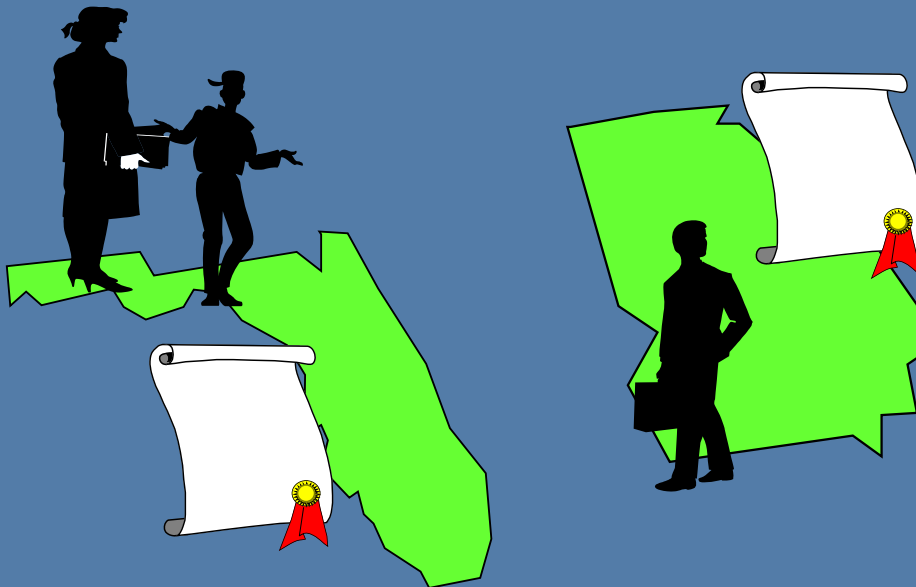
## Modification Rules (2)

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- When 2 or More States can claim CEJ, determine the presumed Controlling Order. The State that Issued the Controlling Order has exclusive Jurisdiction to modify:
  - “Child’s Home State”
  - If no Child’s Home State, State with the most recent Order

# More than One CEJ State

- If  $> 1$  State can claim CEJ, Controlling Order is from Child's Home State. State that Issued Controlling Order has Exclusive Jurisdiction to Modify.



Child there for prior  
6 mos.

## More than 1 CEJ State (2)

- If > 1 State can claim CEJ and no Issuing State is Child's Home State, Controlling Order is Most Recent Order. State that Issued Controlling Order has Exclusive Jurisdiction to Modify.



Child here for prior 2 mos.

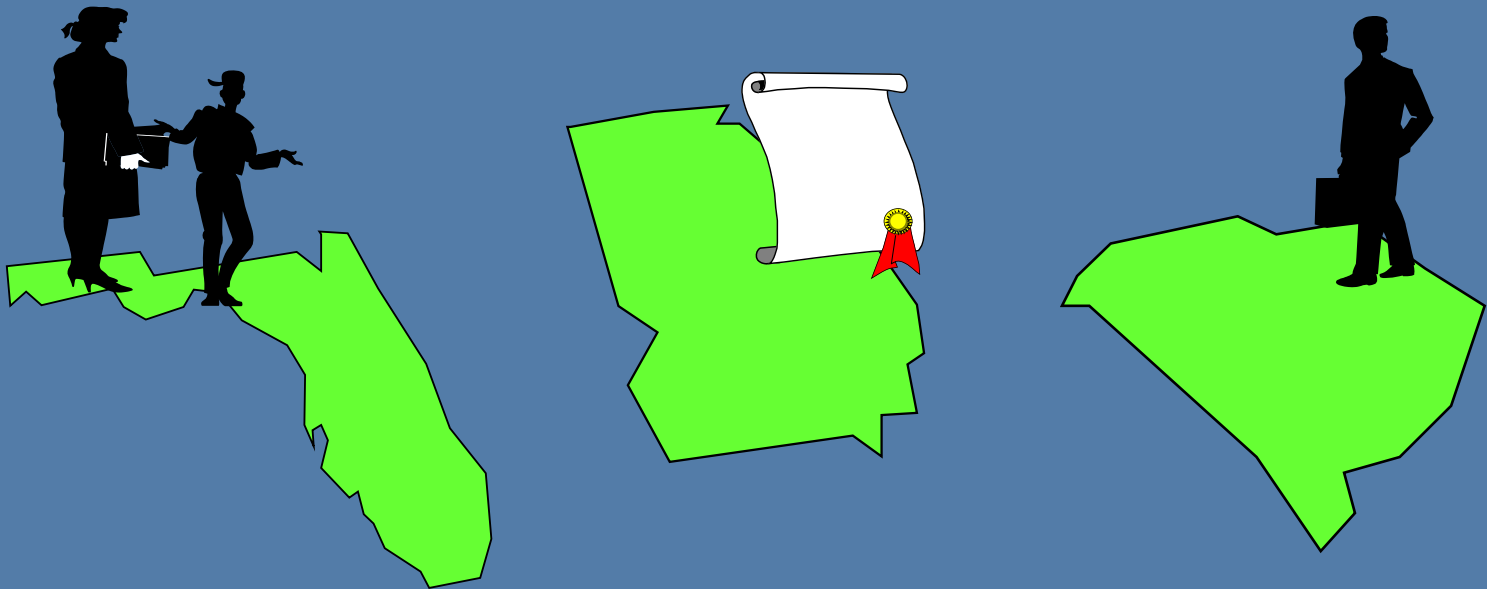


Child never lived here.



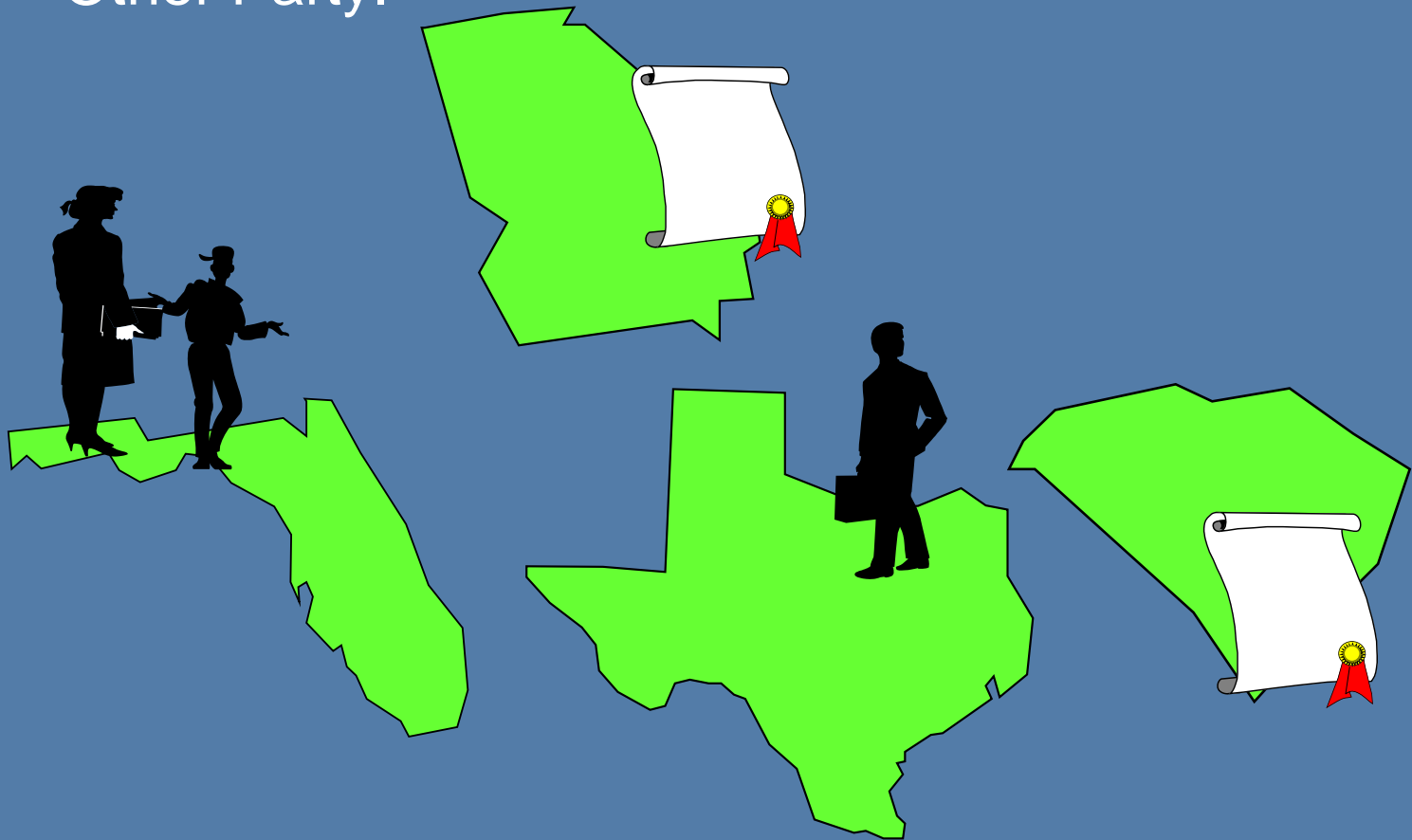
## Modification Rules (3)

- If 1 Order but no CEJ State, Register for Modification in State with Jurisdiction over Nonmovant.



## Modification Rules (4)

- If  $> 1$  Order but no CEJ State, No Controlling Order. Seek Establishment in State with Jurisdiction over Other Party.



- Duration of Support:
  - The law of the State that issued the initial controlling order establishes the duration of support.
  - The initial controlling order may be modified, but the duration of support will remain the same.

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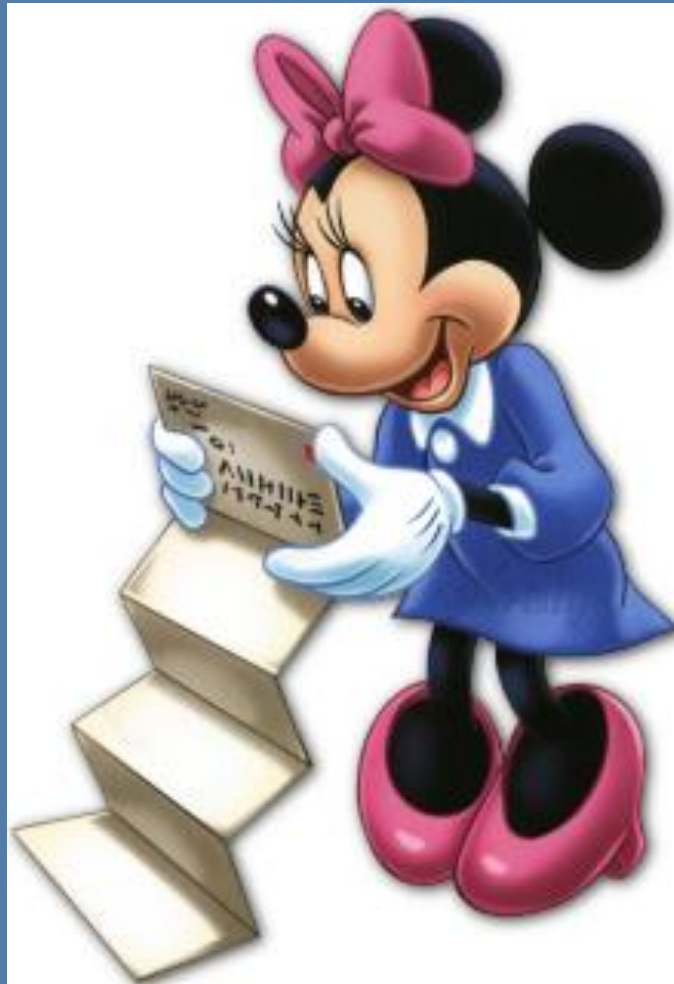


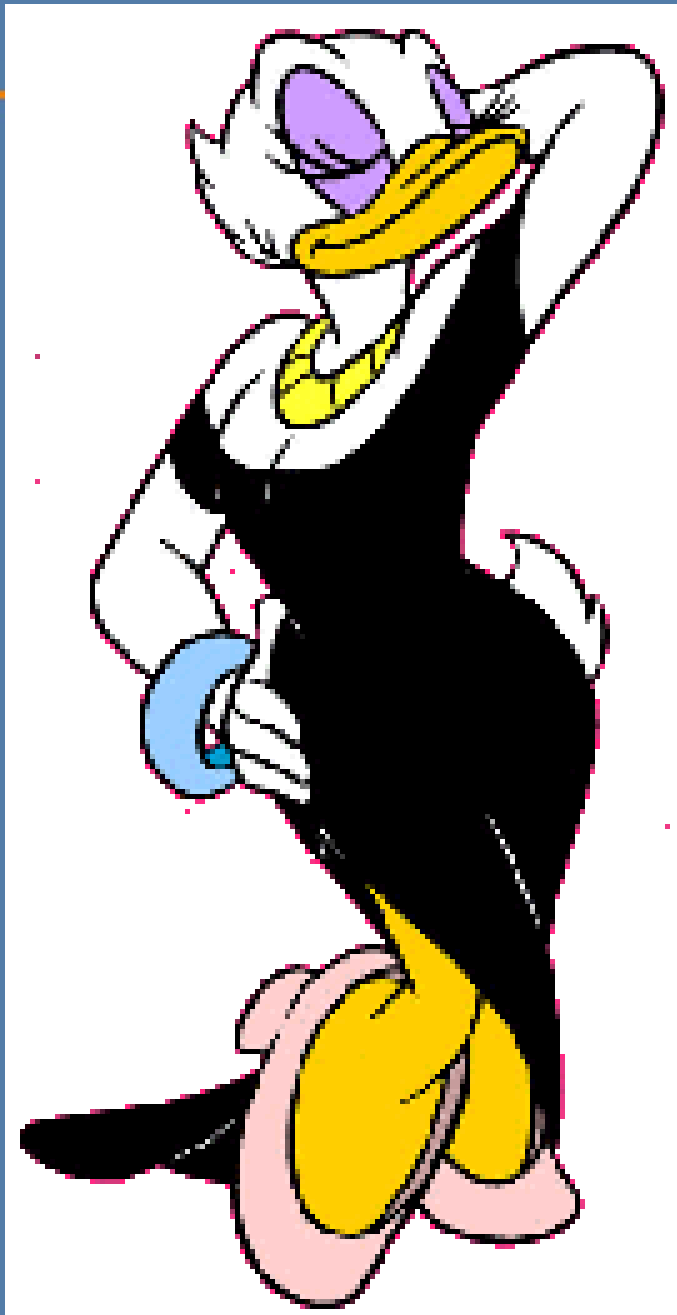
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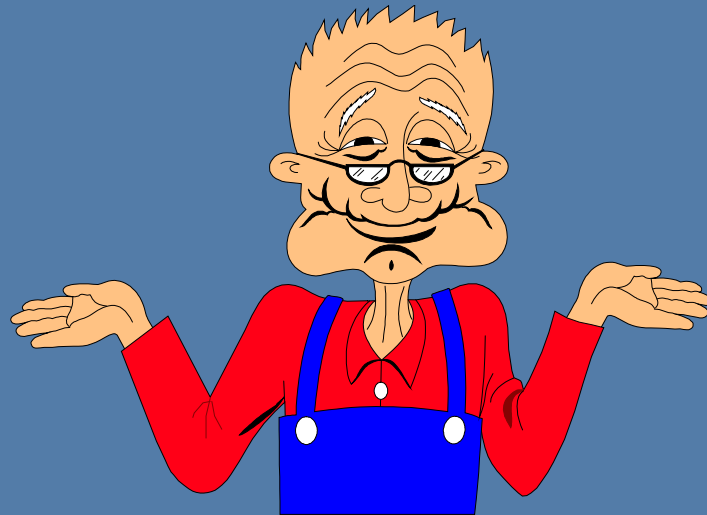


**No More *De Novo* Orders**



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# Establishment vs. Modification







Tribunal Says

Children are  
products of the  
marriage. Parties  
are divorced.

It is so Ordered



Tribunal Says

As support for the child,  
NCP shall

Pay \$ 0  
per month

It is so Ordered



Tribunal Says

NCP shall

Provide health  
insurance  
coverage

It is so Ordered

# Evidentiary Provisions

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- Documents, not excluded as hearsay, are admissible **if given under penalty of perjury**. Deletes req't of oath.
- Tribunal **MUST** permit out-of-state party or witness to testify by telephone or other means at a designated tribunal or other location in that State.
- **A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.**